

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 24

ALTERNATE CONCEPTS, INC.

Employer

and

Case: 24-RC-8525

UNION DE TRONQUISTAS DE  
PUERTO RICO, LOCAL 901, IBT, AFL-CIO<sup>1</sup>

Petitioner

**DECISION AND DIRECTION OF ELECTION**

The Employer, Alternate Concepts, Inc., operates an urban commuter rail system in Puerto Rico. The Petitioner, Union De Tronquistas De Puerto Rico, Local 901, IBT, AFL-CIO, filed a petition with the National Labor Relations Board, herein after the Board, under Section 9(c) of the National Labor Relations Act, hereinafter the Act, seeking to represent a unit of full-time and regular part-time Operation Control Center Line Controllers employed by the Employer at its Guaynabo offices. A hearing officer of the Board held a hearing and the Employer filed a brief with me.

As presented at the hearing and in the brief, the parties disagree on the following issue: whether the Line Controllers are supervisors within the meaning of Section 2(11) of the Act and/or managers within the meaning of Section 2(13) of the Act. The Employer contends the unit is inappropriate and the Petition should be dismissed because the Line Controllers are statutory supervisors and/or managers.

I have considered the evidence and the arguments presented by the parties on this issue. As discussed below, I have concluded that Line Controllers are not supervisors or managers within the meaning of the Act.

To provide context for my discussion of this issue, I will first provide an overview of the Employer's operations. Then, I will present the facts and reasoning that supports my conclusion.

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<sup>1</sup>The Petitioner's name is amended to reflect its full name and affiliation with the AFL-CIO.

## **I. OVERVIEW OF OPERATIONS**

Puerto Rico Highway Transportation Authority, hereinafter the Transportation Authority, operates an urban commuter rail system known as the “Tren Urbano,” connecting the San Juan, Bayamon and Guaynabo municipalities in Puerto Rico. There are 16 train stations in this system. The Transportation Authority has contracted with the Employer to operate and maintain the commuter rail system for a period of five years, with an option for five additional years.

The Employer has two main departments: the Station Department and the Operations Department. The Station Department is responsible for managing 16 train stations, including 39 Station Officials and 118 Station Attendants. The Operations Department is responsible for all transportation operations, including 51 Train Operators, as well as five Station Officials. The Station Officials supervise the Train Operators and Station Attendants and were deemed statutory supervisors in the Decision and Order that issued in Case 24-RC-8496 on January 23, 2006. On the other hand, the Operation Control Center, hereinafter the OCC, is supervised by the OCC Supervisors, who in turn report to the OCC Coordinator, who in turn reports to the Operations Manager. As this chain of command demonstrates, the Operations Control Center is under the Operations Department.

The OCC is responsible for the operation of the entire “Tren Urbano” rail system, including all 16 train stations, the mainline, the yard, and all right-of-way areas. It functions like the central brain of the rail system, analogous to an air traffic control tower whose primary goal is to keep planes on schedule in order to avoid collisions and monetary penalties. Similarly, the central role of the OCC is to ensure that the rail system operates safely and in conformity with the terms of the contract between the Employer and the Transportation Authority, hereinafter the Contract, and in compliance with safety regulations of the Federal Transportation Agency, hereinafter FTA. The Contract specifies the entire operational and maintenance schedule that must be performed by the Employer. If the Employer deviates from the Contract’s schedule, it is liable for penalties ranging from \$750 to \$1.5 million a year.

The OCC office is outfitted with multiple consoles that display the entire train system. The consoles are monitored at all times by the Line Controllers and an OCC Supervisor. There are also various communication devices that enable Line Controllers to speak directly with Train Operators and Station Officials. There are computer programs designed to ensure that multiple trains are not on a collision course on the same track, that the tracks are powered and, in general, that the system is operating in a safe and timely manner. Finally, there are 20 different screens that are used by private security personnel referred to as “St. James” and state police to monitor the stations.

The OCC is located on the third floor of a building on Highway 21. The OCC room is located across from the General Manager’s office, which is adjacent to the Human Resources office. The OCC consists of the following personnel: one Coordinator, five

Supervisors, 11 Line Controllers, and an unknown number of Clerks, private security personnel referred to as "St. James" and the State Police. The OCC Coordinator, Gisela Vallejo, conducts her duties outside of the OCC building, unless she is acting as an OCC Supervisor. Ms. Vallejo reports to the Manager of Operations, Pedro Adorno. At the time of the hearing, six of the Line Controllers were certified and five of them were in training. All of the five OCC Supervisors were certified.

## **II. SUPERVISORY/MANAGERIAL STATUS OF LINE CONTROLLERS**

Before examining the specific duties and authority of Line Controllers, I will briefly outline the requirements for establishing supervisory/managerial status.

Section 2(11) of the Act defines a supervisor as "any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a routine or clerical nature, but requires the use of independent judgment." To meet this definition, an individual needs to possess only one of the 12 enumerated authorities, or the authority to effectively recommend such action. *Ohio Power Co. v. NLRB*, 276 F.2d 385 (6th Cir. 1949), cert denied 338 US 899 (1949). The exercise of that authority, however, must involve the use of independent judgment. *Harborside Healthcare, Inc.*, 330 NLRB 1134 (2000). Also, it must be exercised in the interest of the employer.

The burden of proving supervisory status is on the party that asserts such status exists. *Kentucky River Community Care, Inc.*, 532 US 706, 711-12 (2001). Numerous Board decisions reflect a concern not to construe Section 2(11) "too broadly because the employee who is deemed a supervisor is denied employee rights which the Act is intended to protect." *Chicago Metallic Corp.*, 273 NLRB 1677, 1689 (1985), affd. in relevant part, 794 F.2d 527 (9<sup>th</sup> Cir. 1986); *Chevron Shipping Co.*, 317 NLRB 379, 381 (1995). Lack of evidence is construed against the party asserting supervisory status. *Michigan Mason Home*, 332 NLRB 1409 (2000). Mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory status. *Sears Roebuck & Co.*, 304 NLRB 193 (1991).

Although not expressly excluded from coverage by the Act, "managerial" employees not otherwise supervisory employees, long have been treated by the Board as implicitly excluded from such coverage. In 1974, the Supreme Court affirmed the Board's interpretation of the Act. *NLRB v. Bell Aerospace Co.*, 416 U.S. 267 (1974). In *Bell Aerospace*, the Court adopted the Board's definition that managerial employees are those "who formulate and effectuate management policies by expressing and making operative the decisions of their employer, and those who have discretion in the performance of their jobs independent of their employer's established policy." See *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 576 (1994). The party contending such carries the burden of persuasion on showing managerial status. *NLRB v. Kentucky River*

*Community Care*, 532 U.S. 706 (2001) (implicit in the Court's language that party asserting a statutory exception carries the burden of proving it).

In the instant matter, the parties stipulated that Line Controllers do not possess the authority to hire, transfer, suspend, layoff, recall, promote, discharge, reward or discipline employees. Additionally, with the exception of their role in discipline, there was not any evidence adduced that they could effectively recommend such actions or that they possessed authority to adjust grievances. Accordingly, after providing an overview of the Line Controller position, I will discuss the Line Controller's role in the following: (1) effectively recommending discipline, (2) responsibly directing employees, and (3) assigning work. Finally, I will discuss whether they are managerial employees under the Act.

#### **A. Overview of Line Controller Position**

Line Controllers are responsible for monitoring all train movements and for overseeing the distribution of all electrical power for the systems operation. They coordinate activities with appropriate personnel to ensure the safety of all system users and staff. They perform their function through the manipulation of the OCC system called "Escalla." "Escalla" provides information about the Belle Power Station, Traction Power Station, and Station Power System, and essentially all information that Line Controllers need to perform their job—such as where a train is located, whether a track has enough power and in which direction a train is moving or where it is stopped. Also, if a Line Controller needs to reestablish a rail line after a breakdown has occurred, it is reestablished through "Escalla."

Line Controllers are responsible for all 16 stations that form the mainline. The mainline consists of two tracks—one running East and the other running West. Line Controllers are in constant communication with Train Operators and Station Officials. They communicate such matters as when a train should bypass another, when a malfunctioning train should be exchanged with another and whether passengers should be escorted onto or off of trains. They also inform Train Operators when a train needs washing and of other maintenance work which is determined by the maintenance schedule either prepared by the Department of Vehicles and/or the Contract.

The mainline is normally controlled through a system called the Automatic Train System (ATS). However, if the train routes are not functioning normally because of rain, Line Controllers control the trains semi-manually. This mode of operating the train system is called the Cold Manual Mode (CMM). Also, a Line Controller can run the trains completely manually through a mode called Running or Restricted Manual Mode (RMM). RMM is used, for example, when the trains are not receiving any information from the lines because of a malfunction. Because RMM is completely manual and does not receive any information from the automated system, the entire and exact instructions received from OCC must be followed by Train Operators and Station Officials. Line Controllers authorize whether the mainline is running on ATS, CMM, or RMM. In doing this, they instruct Train Operators and Station Officials as to when a train should be moving and where it should

be going. As the Line Controllers have the full picture of the rail system, deviation from their instructions could lead to train delays and at worst, accidents.

In yard operations, all movement functions manually, as there is no ATS system in place. Therefore, the Line Controllers provide all instructions as to whether a train should be entering or exiting the yard. These instructions are detailed in the Standard Operating Procedures.

At the OCC, there are three to four work shifts during a 24-hour period. During each shift, there are one to three Line Controllers on duty, as well as one OCC Supervisor, one clerk, one St. James security employee and one State Police. When there is only one Line Controller on duty, that Line Controller is responsible for the operation of the mainline. If there are two or three Line Controllers on duty, one mans and operates the console that displays the mainline and the others man the second console that monitors the equipment and programs related to powering the train tracks, called SCADA. They also answer phone calls, report problems to maintenance, oversee the yard operations and monitor the stations via cameras, so that the Line Controller monitoring and operating the mainline can concentrate completely on that job. When there is more than one Line Controller on duty in a single shift, the OCC Supervisor decides who will monitor the mainline console and who will monitor the SCADA console and perform the other ancillary duties. The OCC Supervisor usually rotates the Line Controllers on the mainline so that they get experience with all functions. The OCC Supervisor assigns shifts to the Line Controllers. Contrary to the Employer's brief, the record established that, at all times during each shift, there is an OCC Supervisor overseeing the OCC where the Line Controllers work.

Line Controllers are also responsible for reporting to an OCC Supervisor any vehicle discrepancies and all unusual or emergency incidents that occur on their shifts. As stated in the OCC's Standard Operating Procedure (Exhibit 8, §101.4), Line Controllers are required to fill out and forward to the OCC Supervisor an incident report in any of the following situations: (a) train delay; (b) accident involving passengers or employees; (c) accident involving any type of equipment; (d) any instance of employee negligence or failure to obey rules; (e) any passenger complaint; (f) any safety related situation that has not been corrected; and, (g) any equipment failure that has not been corrected.

Line Controllers are paid an annual salary. The starting salary is \$28,000. After six months, they receive an evaluation and their salary is increased to \$31,500. The OCC Supervisors are also paid a salary that ranges from \$47,000 to \$55,000.

Two versions of a job description for the Line Controllers were introduced into the record at the hearing. The first job description dated November 1999 (and revised September 2002) specifically states that "this position has no supervisory responsibilities." The second job description was drafted by the Employer in March 2006 (and revised April 2006), but had not yet been officially approved as of the time of the hearing. This second job description states, under the heading "Supervisory Responsibilities," that the "Line Controller[s] support and supervise all the functions of the Transportation Operations Department, including Power, Station facilities, Technical Maintenance and Maintenance

following the established Standard Operating procedures (SOP), Special Orders, Tack Allocation, Safety guidelines and good commonsense.”

## **B. Effectively Recommend Discipline**

Generally, the act of reporting misconduct or irregularity does not constitute effective recommendation of discipline when management undertakes its own investigation and decides what, if any, discipline to impose. See, *Los Angeles Water and Power Employees' Association*, 340 NLRB 1232 (2003). Reporting on incidents of employee misconduct is not supervisory if the reports do not necessarily lead to discipline and do not contain disciplinary recommendations. *Schnurmacher*, 214 F.3d at 265 (citing *Meenan Oil Co.*, 139 F.3d 311 (2d Cir. 1998)); *Ten Broeck Commons*, 320 NLRB 806, 812 (1996); *Illinois Veterans Home at Anna L. P.*, 323 NLRB 890 (1997).

When a Line Controller's instructions are not obeyed, he or she is required to report it in writing to the OCC Supervisor. From there, appropriate action is taken. The Employer did not introduce into the record a single instance where a Line Controller recommended that an employee receive a warning, suspension or be discharged for not following an instruction.

For instance, as shown in Exhibit R-1, a Train Operator failed to follow a Line Controller's instructions and received a written warning. However, the Line Controller did not recommend that a written warning be given. Rather, the written warning was given in accordance to the terms in the collective-bargaining agreement between the Employer and the Teamsters, which represents those employees.

A Line Controller, however, may recommend that a drug test be given. In Exhibit R-4, a Train Operator failed to follow a Line Controller's instructions to continue operating the train in CMM. The Line Controller then ordered that the Train Operator take a drug and alcohol test, which was then referred to Human Resources. The record is silent as to whether any disciplinary action was given as a result of the drug and alcohol test. However, it is clear that, while the Line Controller ordered a drug test, disciplinary action was not recommended.

Line Controllers also may order unauthorized persons to leave the yard area. In Exhibit R-2, the Line Controller instructed a Station Official to check on persons walking in the yard area. After determining that their presence was not authorized, the Line Controller instructed the Station Official to remove the unauthorized persons from the yard. Her instructions were complied with. The report in Exhibit R-2 does not show any recommendation for disciplinary action.

Finally, although the general rule is that a Line Controller's instructions are to be followed at all times, as they have a birds' eye view of the entire operations, a Line Controller's instruction is not absolute. For example, a Line Controller's instruction must be disregarded if it contravenes safety policy. Thus, in Exhibit R-3, a Train Operator received authorization from the Line Controller to open a door so that a Maintenance employee

could troubleshoot the door. A Station Official saw that passengers were inside the train and ordered the Train Operator to close the door. The Train Operator refused, stating that the Line Controller had authorized it. The Train Operator, Line Controller, and Maintenance employee were temporarily suspended and ordered to take a substance control test. The Operator's defense that he was only obeying the orders of the Line Controller was rejected.

In sum, the Employer failed to establish that Line Controllers have the authority to recommend specific disciplinary action and that any disciplinary recommendations were followed by management without further investigation. OCC Coordinator Gisela Vallejo admitted this during her testimony. Therefore, even though Line Controllers report all irregularities and may recommend drug tests, it is well established that the mere exercise of a reporting function, which does not automatically lead to further discipline or adverse action against an employee, does not establish disciplinary authority for purposes of Section 2(11) of the Act. *Lakeview Health Center*, 308 NLRB 75, 78-79 (1992), citing *Ohio Masonic Home*, 295 NLRB 390, 393 (1989); and *Passavant Health Center*, 284 NLRB 887, 891 (1987).

Thus, the record failed to establish that Line Controllers effectively recommend discipline within the meaning of Section 2(11) of the Act.

### **C. Responsibly Direct with Independent Judgment**

There are several factors used to determine whether an individual has authority to "responsibly direct" within the meaning of Section 2(11). First, the evidence must establish that the individual has the authority to ensure that a work unit achieves management's objective and, thus, is "in charge." Second, the evidence must establish that the individual has sole or significant authority over the work unit and is not overseen by another supervisor. Third, the employer must rely on this person to ensure that management policies and rules are implemented. Fourth, the individual must be held accountable for the work of others. Lastly, the individual must exercise significant discretion and judgment when directing the work unit. The test is the *degree* of discretion used and not the *type* of discretion. See, *Kentucky River*, *supra*.

One of the fundamental duties of a Line Controller is to communicate with Train Operators, giving them instructions concerning how the train operation is going to be developed, such as when a train should be dispatched according to the train timetable. If a Line Controller detects something is not being complied with or some specific action is to be carried out (per Contract or safety regulation), the Line Controller gives direct instructions to the Train Operator to continue with the determined operation or stop the operation at any given time. This is especially important if the train is not running automatically (ATC mode), but manually or semi-manually using CMM or RMM. The Line Controller also communicates with Station Officials to give them instructions, such as to remove a train from a station. Thus, the entire operation and safety of the system depends on the Line Controller's instructions.

The Line Controller's instructions, however, come from the information obtained from the OCC consoles that monitor the location of the trains, and how the tracks are powered. They formulate their instructions, not from their independent judgment, but from operation and maintenance schedules found in the Contract and from detailed directions and safety regulations found in the voluminous Standard Operating Procedures. The Line Controller cannot deviate from these schedules, procedures and regulations. In fact, deviation can cause contractual breaches, safety hazards and/or accidents.

Moreover, unlike the pilots at issue in *American Commercial Barge Line Co.*, 337 NLRB 1070 (2002), who were unsupervised when the captain was off duty, the record reflects that an OCC Supervisor is assigned to every shift with the Line Controllers.

Line Controllers do give instructions related to safety. As shown in Exhibit R-6, a Line Controller told a Station Official to verify a potentially unsafe occurrence on the line. A train had not stopped properly on the platform, and the last two doors opened off of the platform. After being informed of this, the Line Controller, in accordance with Standard Operating Procedure, instructed the Station Official to verify this. The record is silent as to what happened after it was verified. Also, a Line Controller may instruct a Station Official to remove employees and managers from the yard if their presence is in violation of safety rules. For example, as shown in Exhibit R-2, the Line Controller had persons removed because they were not wearing safety vests and the trains were running on CMM. Further, according to Line Controller Wendy Perez's testimony, without consulting anyone, she shut down the power in the yard so that a train, without functioning brakes, could be derailed instead of going onto the mainline and potentially colliding with another train. As Perez shut down the power on her own, this incident did not involve issuing instructions to another employee. Moreover, in all of these examples, when the Line Controller gave instructions to other employees, the instructions were not based on his or her independent judgment regarding the situation, but were based upon the safety protocols established by the Employer's Standard Operating Procedures.

Standard Operating Procedure 107.2 states that the OCC Supervisor is responsible for the overall control and coordination of emergency situations on "Tren Urbano." Thus, unlike the shift supervisors that were found to "direct work" in *NLRB v. Quinnipac College*, 256 F.2d 68 (2<sup>nd</sup> Cir. 2001), because they independently handled emergency situations even though normally they were expected to follow established policies and procedures, the Employer's Line Controllers cannot and do not handle emergency situations independently. Instead, an OCC Supervisor is always present and the Line Controller must advise the OCC Supervisor of the situation. Further, unlike the shift supervisors in *Prime Energy*, 224 F.3d 206 (2000), Line Controllers do not notify their supervisors after an emergency situation is dealt with but, instead, notify their OCC Supervisor from the very beginning of a situation. Further unlike the shift supervisors in *Prime Energy*, during every shift worked by a Line Controller, the OCC is under the control of an OCC Supervisor. By virtue of an OCC Supervisor's constant presence, the need never arises for a Line Controller to deal independently with an emergency situation before informing the OCC Supervisor. Rather, the OCC Supervisor, as stated in the Standard Operating Procedure,



is the person who is responsible for the overall control and coordination of emergency situations.

The record establishes that an OCC Supervisor, not the Line Controller, is “in charge” of the OCC because the OCC Supervisor is always assigned to the OCC and assigns the shifts and duties to Line Controllers. Further, there is no evidence that Line Controllers use independent judgment when instructing Train Operators and Station Officials; instead, they rely completely on existing safety protocol and the Standard Operating Procedures. Significantly, and contrary to the Employer’s conclusionary assertions, the record does not establish that the Line Controllers are held accountable for the work of the Train Operators, the Station Officials or any other employee. Accordingly, the Employer failed to meet its burden of showing that Line Controllers possess the authority to “direct work” within the meaning of Section 2(11) of the Act.

#### **D. Assign Work with Independent Judgment**

One of the factors examined to determine whether an individual has authority to assign work within the meaning of Section 2(11) is whether that individual has discretion to assign work of differing degree of difficulty or desirability on the basis of his/her own assessment of an employee’s ability. Another factor is whether the choice of to whom the work is assigned is dictated by non-discretionary factors.

Line Controllers may authorize Train Operators or Station Officials to wash the trains. The Line Controller knows when to instruct someone to wash a train based on a program called *Maximo*, which has all the information about the trains. This information is regulated by the Contract. If the train washing schedule is not followed, the Employer incurs a monetary penalty.

A Line Controller may not authorize time off for a Train Operator but may authorize bathroom breaks. When a Train Operator requests a bathroom break, the Line Controller coordinates a time and place for another Train Operator to relieve the one that needs to use the bathroom. However, unlike the shift supervisors in *Quinnipiac College*, supra, Line Controllers may not authorize employees to leave work early due to an illness. If a Train Operator requests time off to go home because of illness, the Line Controller must obtain authorization from the proper Station Official before allowing the employee to leave.

Further, Station Officials, not Line Controllers, assign trains to the Train Operators. Line Controllers simply dispatch the appropriate train according to the timetable in the Contract. While the Line Controller is held responsible if the schedule is not followed correctly, he or she is not held responsible for the assignment of the wrong Train Operator to a particular train.

During normal operations, the Line Controllers ensure that trains are proceeding according to schedule. As described above, however, the Line Controller must report any unusual or emergency situation to the OCC Supervisor. The appropriate responsive action to be taken is found among the actions enumerated in the Standard Operating

Procedure—such as stopping train movement, de-energizing third rail traction power, operating the emergency ventilation fans, evacuating passengers, ordering speed restrictions, instituting a manual block, providing flagging protection, instituting an alternate service plan, making a public address announcement, and informing all departments on service conditions. Management maintains oversight of the Line Controllers' actions during an emergency situation by the requirement that Line Controllers keep Senior Managers and all other operating departments informed when service disruption exists.

Lastly, senior Line Controllers evaluate the progress of Line Controller trainees. The senior Line Controller writes a report during a determined period of time and then sends that report to the senior supervisor. The senior supervisor then sends a copy of this report to the Training Department and the OCC Coordinator. Ultimately, however, a Line Controller is certified based on passing an exam rather than on any recommendation given by another Line Controller. Also it is the OCC Supervisor that assigns work and shifts to the Line Controllers, whether certified, senior, or trainee.

Although the Employer's witnesses testified in a conclusionary manner that Line Controllers assign tasks to Train Operators, Station Officials and Attendants, and any person that is necessary to resolve any situation in the operation of the rail system, the record was scant in demonstrating how this occurred and whether the it was based on a Line Controller's exercise of independent judgment. Indeed, there is not any evidence that the work of the Train Operators, Stations Officials or Attendants differs significantly in difficulty or desirability or that the Line Controllers assign work or tasks to these employees based on the Line Controller's assessment of their abilities or attitudes. To the contrary, the record establishes that Line Controllers' instructions are based on the train operation and maintenance schedule found in the Contract, safety protocols and the Standard Operating Procedures, which are regulated by the FTA. Furthermore, an OCC Supervisor is always assigned to every shift. Line Controllers may authorize trains to be washed, but only in accordance with the maintenance schedule.<sup>2</sup> And, although they authorize bathroom breaks, Line Controllers cannot authorize employees to take time off due to illness. While senior Line Controllers may train the new Controllers, ultimately it is the OCC Supervisor who assigns them work and their shift, and the trainees are certified based on an examination. Lastly, even though Line Controllers deal with emergency situations that normally would require a level of independent judgment, here the record shows that they are required to report all unusual and emergency circumstances to the OCC Supervisor who is always present and who has ultimate authority over the train system. Accordingly, the Employer did not meet its burden of establishing that Line Controllers assign work within the meaning of Section 2(11) of the Act.

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<sup>2</sup>See, for example, *Palagonia Bakery Co.*, 339 NLRB 515 (2003) (Telling employees "clean this, clean that," clean this area, have it done soon, or "do that, do here, do there," is routine assignment and direction where there is "no evidence that any of the jobs assigned . . . requires any particular skills, nor that the abilities of any of the employees who perform the jobs differed substantially, such that selecting a particular employee for a task would require independent judgment.")

Finally, the Employer contends that if Line Controllers are not found to be statutory supervisors, that in the alternative, they are managerial employees.<sup>3</sup> However, the record is completely devoid of evidence that Line Controllers effectuate management policies by expressing and making operative the decisions of the Employer, or have discretion in the performance of their jobs independent of the Employer's established policy. To the contrary, Line Controllers are strictly bound to the Contract between the Employer and the Transportation Authority, the Standard Operating Procedures regulated by the FTA, and all other established procedures and policies. Accordingly, the Employer has not met its burden that Line Controllers are managerial employees.

### **III. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The Line Controllers are employees within the meaning of Section 2(3) of the Act.
6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Line Controllers employed by Employer at its Guaynabo offices; excluding all other employees, office clerical employees, guards and supervisors within the meaning of the Act.

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<sup>3</sup>Although the Employer has argued that the Line Controllers should be excluded as managerial employees, at one point its brief uses the phrase "confidential employee." The Employer has not contended at any point, however, nor is there any evidence in the record to establish, that the Line Controllers should be excluded from the unit because they are "confidential employees" as that term has been interpreted by the Board. See *B.F. Goodrich Co.*, 115 NLRB 722, 724 (1956).

## **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by UNION DE TRONQUISTAS DE PUERTO RICO, LOCAL 901, IBT, AFL-CIO.

## **LIST OF VOTERS**

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB. Wyman-Gordan Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Regional Office, La Torre de Plaza – Suite 1002, 525 F.D. Roosevelt Avenue, San Juan, Puerto Rico 00918-1002, on or before June 23, 2006. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

## **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001. This request must be received by the Board in Washington by June 30, 2006.<sup>4</sup>

Dated at San Juan, Puerto Rico, this 16<sup>th</sup> day of June, 2006.

/s/

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Marta M. Figueroa, Regional Director  
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<sup>4</sup>In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: [www.nlrb.gov](http://www.nlrb.gov).